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In re Application of:
Kenneth F. Cook *et al.*
Serial No.: 09/522,563
Filed: March 10, 2000
Attorney Docket No.: 13DV-13190

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed March 3, 2003, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181, or in the alternative, to revive the application under 37 CFR 1.137(b). The petition to withdraw the holding of abandonment is being treated as a petition to accept the response filed therewith as being timely filed.

The petition to accept the response as being timely filed is **GRANTED**.

A non-final Office action was mailed on July 30, 2002, setting a shortened statutory period of three-months for filing a reply. A Notice of Abandonment has not been mailed.

Petitioner asserts that the Office action of July 30, 2002, was not received and only learned about the mailing of the Office action upon receiving a status check from the examiner. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received and a copy of the file docket where the Office action would have been entered had it been received. The petition is accompanied by a response to the Office action of July 30, 2002.

A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of

Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is sufficient to establish a showing of non-receipt of the Office action mailed July 30, 2002. However, a copy of the Office action has been facsimiled transmitted by the examiner and a response thereto has been filed with the instant petition.

For the above stated reason, the petition is granted. The response filed March 10, 2000, is hereby accepted as being timely filed.

The response will be entered and an Office action will be issued in due course.

Inquiries regarding this decision should be directed to Hien H. Phan at (571) 272-1606.

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